

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number:

09/75-128001

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.

Application Number

09/842,024

Filed

April 26, 2001

First Named Inventor

Barry Appelman et al.

Date of Deposit

Art Unit

2142

Examiner

Robert B. Harrell

Signature

Typed or Printed Name of Person Signing Certificate

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(i) is enclosed. (Form PTO/SB/96)

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January 16, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 5 pages are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Barry Appelman et al.	Art Unit :	2142
Serial No. :	09/842,024	Examiner :	Robert B. Harrell
Filed :	April 26, 2001	Conf. No. :	6929
Title :	TARGETED NOTIFICATION OF USERS OF A COMMUNICATIONS SYSTEM		

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pursuant to United States Patent and Trademark Office OG Notices: 12 July 2005 - New Pre-Appeal Brief Conference Pilot Program, a request for a review of identified matters on appeal is hereby submitted with the Notice of Appeal. Review of these identified matters by a panel of Examiners is requested because the rejections of record are clearly not proper and are without basis, in view of a clear legal or factual deficiency in the rejections. All rights to address additional matters on appeal in any subsequent appeal brief are hereby reserved.

Claims 1, 2, 4-11, and 15-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Number 6,360,172 ("Burfeind"). Applicants respectfully traverse this rejection.

Applicants specifically ask the panel to review the following issue:

1. Burfeind fails to describe or suggest all of the features of independent claims 1, 15, and 19, and therefore fails to anticipate these claims and the claims that depend from them.

Discussion of Issues:

1. Burfeind fails to describe or suggest all of the features of independent claims 1, 15, and 19, and therefore fails to anticipate these claims and the claims that depend from them.

Burfeind fails to describe or suggest “targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software and applying the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software,” as recited in claim 1 and similarly recited in claims 15 and 19. Rather, Burfeind describes a system in which a user is first identified, and then a device or software type associated with that user is determined. Specifically, Burfeind describes a system that gathers natural-phenomenological data and personal preferences of the subscriber. Col. 3, lines 1-8. The personal preferences of the subscriber include the subscriber's activities and the geographic locations of the activities, calendar information of the subscriber and modes of delivery. Col. 3, lines 4-8.

The system uses the personal preferences of the subscriber, such as the subscriber's activities, to generate natural-phenomenological data that is particularly useful to the subscriber. Col. 10, lines 13-19 and lines 44-53 (stating the system “generates for a subscriber who has indicated in his/her dynamic personal preferences that sailing is an activity of the subscriber... [a message indicating] the winds for sailing tomorrow will be 10-12 knots”). Once the system generates the personalized natural-phenomenological data, the system delivers the natural-phenomenological data to the output device identified by the subscriber in the personal preferences. *Id.* (stating the system routes the personalized natural-phenomenological information to the subscriber based on the subscriber's output device).

In the final Office Action and during the interview, the Examiner asserted that, in Burfeind, the personal preferences of each subscriber stored in the personal preference database 426 of FIG. 4 comprises the targeting rules, and as such, the targeting rules include target geographic location of the user and a target type of access device or a target type of software modes of delivery. Final Office Action at page 3, lines 16-17. Even assuming, *arguendo*, that this assertion is correct, Burfeind still fails to describe or suggest applying the targeting rules to

the context information *to identify a subset of one or more online users*, as recited in claim 1 and similarly recited in claims 15 and 19.

Instead, as clearly shown and described with respect to FIG. 4 of Burfeind, the Burfeind's system first identifies a user, accesses personal preferences for the identified user, and subsequently generates a message based on the personal preferences of the identified user. Only then will the system retrieve an identification of the output device of the subscriber from the personal preferences to route the message to that device. Col. 10, lines 12-19 and col. 10, line 44 to col. 11, line 22 (stating after the personalize message is generated "the multimedia device interface 480 retrieves the identification of the output device(s) 481 of the subscriber from the personal preferences database"). As such, the system in Burfeind does not use targeting rules designating a target type of access device or a target type of software *to identify* a subset of one or more online users and, instead, uses an identified subscriber to determine the access device to which the personalized message should be routed.

Accordingly, Burfeind fails to describe or suggest "targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software and applying the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software," as recited in claim 1 and similarly recited in claims 15 and 19.

For at least these reasons, Applicants request reconsideration and withdrawal of the rejections of claims 1, 15, and 19, along with their dependent claims.

In view of the above, all of the claims should be in condition for allowance. A formal notice of allowance is thus respectfully requested.

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Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: \_\_\_\_\_

1/16/07 <sup>60</sup>



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